

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

8:10-10310 Robert A. Ferrante

Chapter 7

Adv#: 8:13-01204 Lt Col William Seay (U.S.M.C. Ret) v. Remar Investments LP et al

#1.00 STATUS CONFERENCE RE: Complaint by judgment creditor under 11 U.S.C. Section 506 and Bankruptcy Rule 7001(2) to determine the validity, priority, and extent of Plaintiff's lien on 1) the 518 Harbor Island Drive Real Property; and 2) Debtor's reversionary and other beneficial interest in the 528 Harbor Drive Trust and for orders for fraudulent conveyance of 518 Harbor Island Drive; Declaring the 518 Harbor Island Drive Trust void under California Law as a self settled trust; 2) Declaring void the notice of default filed in April, 2013 by Remar Investments against 518 Harbor Island Drive and the property protected by Bankruptcy Code Section 362(A)(4) from further acts by Remar to enforce its lien; and 3) Declaring Debtor to be the alter ego of 518 Harbor Island Trust (con't from 7-07-16)

Docket 1

Tentative Ruling:

Tentative for 10/6/16:

The court has reviewed the Joint Status Report. The court notes that the District Court's recent order affirming this court's summary judgment order regarding lien priority has been further appealed to the Ninth Circuit. So, it would appear that portions of this case are effectively on hold for some period of time. But the upcoming sale motion, if granted, might profoundly affect where we go with this case. Some questions not addressed in the Joint Status Report include:

1. Will the pending sale motion (if granted and if the sale is consummated) moot the appeal? Will there be an attempt to obtain a stay pending appeal? Can or should proceeds be immediately disbursed from escrow?
2. There are several claims for relief other than the lien priority question (declaratory relief, fraudulent conveyance, usury) and these might still need to be litigated. Should we set deadlines now for litigating those portions so that we can get closer to final resolution, or instead simply suspend this case until the Ninth Circuit rules in the interest of

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT...

Robert A. Ferrante
economy?

Chapter 7

3. In order to sell free of liens under 11 U.S.C. §363(f) it is necessary that one of the five subsections of that section apply, so the court doubts that mere lien priority determination is by itself a sufficient or comprehensive resolution. The court presumes the Trustee and Seay will argue that Remar 's lien is "in *bona fide* dispute." What do the parties propose to do on this score?
4. What if anything does the title company have to say about these or any related questions?

Tentative for 7/7/16:

Has the summary judgment resolved all open questions such that we shall stay the matter pending appeal?

Tentative for 1/28/16:

Has the summary judgment effectively resolved all issues and so that is why there is no status report?

Tentative for 11/12/15:

See #12.

Tentative for 10/27/15:

See #15.

Tentative for 9/1/15:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... Robert A. Ferrante

Chapter 7

Why no status report? What is the effect of BAP's recent decision?

Tentative for 7/30/15:

Based on the late-filed and separate status reports it appears that matters are as yet too unsettled for imposition of deadlines. Continue as status conference to October 29, 2015 at 10:00 a.m. Updated status reports are required in accord with Local Bankruptcy Rules.

Tentative for 5/28/15:

Status conference continued to July 30, 2015 at 10:00 a.m. to assess developments in view of recently amended complaint.

Tentative for 4/23/15:

Status conference continued to May 28, 2015 at 10:00 a.m. Why no new status report?

Tentative for 2/26/15:

Continue to April 23, 2015 at 10:00 a.m. to coincide with trustee's adversary status conference.

Tentative for 10/23/14:

Continue until after new hearing on dismissal in February 2015.

Tentative for 9/4/14:

Has complaint been amended?

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... Robert A. Ferrante

Chapter 7

Tentative for 4/24/14:
Pre-trial conference continued to September 4, 2014 at 10:00 a.m. The court
sees no reason to change established deadlines.

Tentative for 3/4/14:
Deadline for completing discovery: August 1, 2014
Last date for filing pre-trial motions: August 18, 2014
Pre-trial conference on: September 4, 2014 at 10:00 a.m.
Joint pre-trial order due per local rules.

Tentative for 1/23/14:
Still no status report...why?

Prior Tentative:
Why no status report?

Party Information

Debtor(s):

Robert A. Ferrante

Represented By
Richard M Moneymaker

Defendant(s):

Oscar Chacon

Pro Se

Richard C Shinn

Pro Se

Remar Investments LP

Pro Se

Thomas H Casey Ch 7 Trustee

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... Robert A. Ferrante

Chapter 7

Plaintiff(s):

Lt Col William Seay (U.S.M.C. Ret)

Represented By
Brian Lysaght

Trustee(s):

Thomas H Casey (TR)

Pro Se

Thomas H Casey (TR)

Represented By
Thomas H Casey
Thomas A Vogele

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

8:14-14529 Paul Edalat

Chapter 7

Adv#: 8:14-01283 Weneta M.A. Kosmala, solely in her capacity as the v. Edalat et al

#2.00 STATUS CONFERENCE RE: Complaint For: (1) Declaratory Relief that the Vehicles are Property of the Estate; (2) Turnover of the Vehicles Pursuant to 11 U.S.C. Section 542(a); (3) Injunctive Relief Related to the Vehicles; (4) Declaratory Relief that the Interests in the Companies and Related Property Pursuant to 11 U.S.C. Section 542(a); (6) Injunctive Relief Related to The Companies; (7) Declaratory Relief that the Memorabilia are Property of The Estate; (8) Turnover of the Memorabilia Pursuant to 11 U.S.C. Section 542(a); and (9) Injunctive Relief Related to The Memorabilia.
(cont from 8-02-16)

Docket 1

Tentative Ruling:

Tentative for 10/6/16:

What is the status regarding parties not involved in latest stipulation? Should the case as to them be dismissed?

Tentative for 7/28/16:

Is this resolved by the recent stipulation?

Tentative for 6/14/16:

Is this moot in view of #4?

Tentative for 6/2/16:

See #13.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... Paul Edalat

Chapter 7

Tentative for 5/26/16:

Status conference continued to June 2, 2016 at 11:00 a.m. to coincide with motion for judgment on the pleadings. What is the status on reported settlement?

Tentative for 12/3/15:

Status conference continued to February 25, 2015 at 10:00 a.m.

Tentative for 10/1/15:

So, is this settled, or not?

Tentative for 7/23/15:

Status?

Tentative for 1/14/15:

Deadline for completing discovery: May 30, 2015

Last date for filing pre-trial motions: June 15, 2015

Pre-trial conference on: June 25, 2015 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by May 1, 2015.

Party Information

Debtor(s):

Paul Edalat

Represented By
Dennis Winters

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... Paul Edalat

Chapter 7

Defendant(s):

Farah Barghi	Pro Se
Mali Aatchi	Pro Se
Ed Bilezekchian	Pro Se
Paul Edalat	Pro Se
O'Gara Coach Beverly Hills	Pro Se

Plaintiff(s):

Weneta M.A. Kosmala, solely in her	Represented By Jeffrey I Golden
------------------------------------	------------------------------------

Trustee(s):

Weneta M Kosmala (TR)	Pro Se
Weneta M Kosmala (TR)	Pro Se

U.S. Trustee(s):

United States Trustee (SA)	Pro Se
----------------------------	--------

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

8:13-11495 Point Center Financial, Inc.

Chapter 7

Adv#: 8:15-01405 Saxony Land Company v. Grobstein

#3.00 STATUS CONFERENCE RE: Verified Complaint for Declaratory Relief and Quiet Title; Demand for Jury Trial.
(con't from 6-30-16 as a holding date)

Docket 1

Tentative Ruling:

Tentative for 10/6/16:

The court reads that the parties believe a continued status conference would be appropriate. Should this be in lieu of setting deadlines in early 2017?

Tentative for 6/30/16:

Mediation status?

Tentative for 1/14/16:

Deadline for completing discovery: July 16, 2016

Last date for filing pre-trial motions: July 29, 2016

Pre-trial conference on: August 11, 2016 at 10:00 a.m.

Joint pre-trial order due per local rules.

Refer to mediation. Order appointing mediator to be lodged by plaintiff within 10 days. One day of mediation to be completed by July 1, 2016.

Given that neither side has consented to adjudication by final order of the USBC, is abstention appropriate?

Party Information

Debtor(s):

Point Center Financial, Inc.

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... Point Center Financial, Inc.

Chapter 7

Jeffrey S Benice
Carlos F Negrete

Defendant(s):

Howard B Grobstein

Pro Se

Plaintiff(s):

Saxony Land Company

Represented By
Tomas A Ortiz

Trustee(s):

Howard B Grobstein (TR)

Represented By
Rodger M Landau
Roya Zur
Kathy Bazoian Phelps
John P Reitman
Robert G Wilson
Monica Rieder
Jon L Dalberg
Michael G Spector
Peter J Gurfein

Howard B Grobstein (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01441 Anna's Linens, Inc. v. Croscill Home LLC

#4.00 STATUS CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (cont'd from 8-11-16 per order approving stip. to cont. s/c entered 8-02-16)

Docket 1

Tentative Ruling:

Tentative for 10/6/16:

Deadline for completing discovery: February 20, 2017

Last date for filing pre-trial motions: March 6, 2017

Pre-trial conference on: March 23, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Defendant(s):

Croscill Home LLC

Pro Se

Plaintiff(s):

Anna's Linens, Inc.

Represented By

Irving M Gross

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... **Anna's Linens, Inc.**

Chapter 11

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01442 Anna's Linens, Inc. v. Ex Cell Home Fashions, Inc.

#5.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (cont'd from 8-11-16 per order approving stip. to cont.s/c entered 8-02-16)

Docket 1

Tentative Ruling:

Tentative for 10/6/16:

Deadline for completing discovery: February 20, 2017

Last date for filing pre-trial motions: March 6, 2017

Pre-trial conference on: March 23, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Defendant(s):

Ex Cell Home Fashions, Inc.

Pro Se

Plaintiff(s):

Anna's Linens, Inc.

Represented By

Irving M Gross

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... **Anna's Linens, Inc.**

Chapter 11

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

8:15-13008 Anna's Linens, Inc.

Chapter 11

Adv#: 8:15-01444 Anna's Linens, Inc. v. Glenoit LLC

#6.00 STATUS CONFERENCE RE: Complaint for: (1) Avoidance and Recovery of Preferential Transfers [11 USC Sections 547(b), 550(a), and 551]; and (2) Disallowance of Any Claims Held by Defendant [11 USC Section 502(d)] (cont'd from 8-11-16 per order approving stip to cont. s/c entered 8-02-16)

Docket 1

Tentative Ruling:

Tentative for 10/6/16:

Deadline for completing discovery: February 20, 2017

Last date for filing pre-trial motions: March 6, 2017

Pre-trial conference on: March 23, 2017 at 10:00 a.m.

Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Anna's Linens, Inc.

Represented By

David B Golubchik

Lindsey L Smith

Eve H Karasik

John-Patrick M Fritz

Todd M Arnold

Ian Landsberg

Juliet Y Oh

Defendant(s):

Glenoit LLC

Pro Se

Plaintiff(s):

Anna's Linens, Inc.

Represented By

Irving M Gross

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... Anna's Linens, Inc.

Chapter 11

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

8:07-12994 South Coast Oil Corporation

Chapter 7

Adv#: 8:16-01148 Joseph v. Alfred Joseph Palladino 1994 Trust

#7.00 STATUS CONFERENCE RE: Chapter 7 Trustee's Complaint Seeking
Avoidance of Lien Pursuant to 11 USC Section 724(a)
(cont'd from 8-25-16)

Docket 1

***** VACATED *** REASON: OFF CALENDAR; NOTICE OF
VOLUNTARY DISMISSAL OF AN ADVERSARY PROCEEDING THAT
DOES NOT INVOLVE CLAIMS UNDER 11 U.S.C. SECTION 727 [FRBP
7041(a)] FILED 9/21/16**

Tentative Ruling:

Tentative for 8/25/16:
What is status of service? Why no status report?

Party Information

Debtor(s):

South Coast Oil Corporation

Represented By
David M Poitras
Edward O Lear
Douglas L Mahaffey

Defendant(s):

Alfred Joseph Palladino 1994 Trust

Pro Se

Plaintiff(s):

James J Joseph

Represented By
Cathrine M Castaldi

Trustee(s):

James J Joseph (TR)

Pro Se

James J Joseph (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... South Coast Oil Corporation

Chapter 7

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

8:14-14529 Paul Edalat

Chapter 7

Adv#: 8:16-01177 Khorasani v. Luberski, Inc.

#8.00 STATUS CONFERENCE RE: Complaint for (1) Declaratory Relief RE Validity, Priority, and Extent of Alleged Liens; and Avoidance and Recovery of Unperfected Liens Pursuant to 11 USC Sections 544(a)(3) [11 USC Sections 544, 550 and FRBP Rule 7001]

Docket 1

Tentative Ruling:

Tentative for 10/6/16:

Status conference continued to December 8, 2016 at 10:00 a.m. to follow hearing on dismissal motion.

Party Information

Debtor(s):

Paul Edalat

Represented By
D Edward Hays
Lisa G Salisbury

Defendant(s):

Luberski, Inc.

Pro Se

Plaintiff(s):

Mehdi Khorasani

Represented By
Lee H Durst

Trustee(s):

Weneta M Kosmala (TR)

Represented By
Reem J Bello
Jeffrey I Golden
Faye C Rasch

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

8:15-13601 Joseph Wayne Shedarowich

Chapter 7

Adv#: 8:15-01429 Marlow v. Shedarowich et al

#9.00 PRE-TRIAL CONFERENCE RE: Complaint to Determine Dischargeability of Debt [11 USC sections 523(a)(2), (6) and 727(a)(2) and (3)]
(cont'd from 8-4-16)

Docket 1

Tentative Ruling:

Tentative for 10/6/16:
Why no pretrial stip/order?

Tentative for 8/4/16:
Where is the joint pre-trial stip/order?

Tentative for 1/28/16:
Deadline for completing discovery: July 1, 2016
Last date for filing pre-trial motions: July 18, 2016
Pre-trial conference on: August 4, 2016 at 10:00 a.m.
Joint pre-trial order due per local rules.

Party Information

Debtor(s):

Joseph Wayne Shedarowich	Pro Se
--------------------------	--------

Defendant(s):

Cecilia Loreto Shedarowich	Pro Se
----------------------------	--------

Joseph Wayne Shedarowich	Pro Se
--------------------------	--------

Joint Debtor(s):

Cecilia Loreto Shedarowich	Pro Se
----------------------------	--------

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

10:00 AM

CONT... Joseph Wayne Shedarowich

Chapter 7

Plaintiff(s):

Charlaine Marlow

Represented By
John J Gulino

Trustee(s):

Richard A Marshack (TR)

Pro Se

Richard A Marshack (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

8:14-11006 Delgene Corporation

Chapter 7

Adv#: 8:14-01214 Naylor v. Glover, III et al

#10.00 STATUS CONFERENCE RE: Complaint for (1) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 USC Section 544(b)(1), 548(a)(1)(A), and 550, and California Civil Code Section 3439.05; (2) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 USC Sections 544(b)(1), 548(a)(1)(B)(i)(ii)(I), and 550, and California Civil Code Section 3439.05; (3) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 USC Sections 544(b)(1), 548(a)(1)(B)(i)(ii)(II) and 550, and California Civil Code Section 3439.04(a)(2)(A); (4) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 USC Sections 544(b)(1), 548(a)(1)(B)(i)(ii)(III), and 550, and California Civil Code Section 3439.04(a)(2)(A); (5) Avoidance and Recovery of Fraudulent Transfer Pursuant to 11 USC Sections 544(b)(1), 548(a)(1)(B)(i)(ii)(IV), and 550, and California Civil Code Section 3439.04(a)(2)(A); (6) Turnover of Property Pursuant to 11 USC Section 542; (7) Fraud; and (8) Conversion (con't from 8-4-16 per order approving stip. entered 7-25-16)

Docket 1

***** VACATED *** REASON: CONTINUED TO FEBRUARY 9, 2017 AT 11:00 A.M. PER ORDER APPROVING STIPULATION ENTERED 9/30/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Delgene Corporation

Represented By
Tate C Casey

Defendant(s):

Christian Joel O'Meara

Pro Se

Richard Paul Glover III

Pro Se

Plaintiff(s):

Karen Naylor

Represented By
Robert P Goe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Delgene Corporation

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

Karen S Naylor (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

8:14-11006 Delgene Corporation

Chapter 7

Adv#: 8:14-01214 Naylor v. Glover, III et al

#11.00 Defendant Richard Paul Glover III's Motion to Dismiss or in the Alternative,
Motion For More Definite Statement
(cont from 8-4-16 per order approving stipulation entered 7-25-16)

Docket 25

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION ENTERED ON 9/30/16.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Delgene Corporation

Represented By
Tate C Casey

Defendant(s):

Christian Joel O'Meara

Represented By
Ronald S Hodges
Ryan D ODea

Richard Paul Glover III

Represented By
Shawna Melton

Plaintiff(s):

Karen S Naylor

Represented By
Robert P Goe

Trustee(s):

Karen S Naylor (TR)

Represented By
Robert P Goe

Karen S Naylor (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Delgene Corporation

Chapter 7

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

:

Chapter 0

Adv#: 8:16-01144 Benton et al v. Pennysaver USA, LLC et al

#12.00 Motion For Voluntary Dismissal Of Action Without Prejudice

Docket 29

***** VACATED *** REASON: OFF CALENDAR; ORDER ON MOTION
TO TRANSFER ADVERSARY PROCEEDING TO UNITED STATES
BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE ON
OCTOBER 5, 2016**

Tentative Ruling:

- NONE LISTED -

Party Information

Defendant(s):

Opengate Capital LLC

Represented By
Richard W Esterkin

Pennysaver USA, LLC

Pro Se

Plaintiff(s):

Malloy Mitra

Represented By
Marcus J Bradley
Michele M Vercoski
Richard D McCune

Sergio Arias

Represented By
Raul Perez
Michele M Vercoski
Richard D McCune

Dinah Griffin

Represented By
Marcus J Bradley
Michele M Vercoski
Richard D McCune

Luann Benton

Represented By
Michele M Vercoski

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT...

Chapter 0

Richard D McCune

Mary Carter

Represented By
Craig T Byrnes
Michele M Vercoski
Richard D McCune

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

8:11-23786 Alan Jerome Degenhardt

Chapter 7

Adv#: 8:11-01520 Abel et al v. Degenhardt et al

**#13.00 STATUS CONFERENCE RE: Plaintiffs' Motion For Summary Judgment
(cont'd from 8-11-16)**

Docket 242

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION FOR ORDER DISMISSING ADVERSARY PROCEEDING
ENTERED 10-5-16**

Tentative Ruling:

Tentative for 8/11/16:

Continue to October 6, 2016 at 11:00 a.m.

Tentative for 3/17/16:

1. The Parties' Contentions

This is Plaintiffs' Motion for Summary Judgment on the first and second claims for relief for, respectively, actual fraud under §523(a)(2)(A) and fraudulent financial statement under §523(a)(2)(B). The court earlier dismissed the §§523(a)(4) and (a)(19) claims for relief in summary judgment. Trial of this matter (which has been pending since 2011) has been continued several times because the parties universally agreed that the action pending in County of Sonoma, *Mosier, et al., v. KRR, et al.*, Case No. SCV-247315 (sometimes "*Mosier* Action") concerned the same or nearly the same issues as are framed in this adversary proceeding, and therefore would likely resolve the matter under principles of collateral estoppel. Judgment was rendered in the *Mosier* matter October 22, 2015 but no fraud was found. It is worth noting that the allegations of this complaint, as those in *Mosier*, relate only to a real estate project in Kingsburg, CA.

Plaintiffs' current motion changes course and ignores *Mosier* but rests entirely

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

instead on the judgment rendered in yet another action filed in Sonoma County, *Liebling et al v. Goodrich, et al*, Case no. SCV-245738 ("*Liebling* Action") which resulted in a judgment against some of the defendants named in that action. Plaintiffs do so because of a finding in *Liebling* that some of the defendants (not debtors), including a corporation, Triple J's, fraudulently obtained loans based on fraudulent appraisals prepared by Tyna Degenhardt, and that the lenders in the *Liebling* Action had loaned funds in reliance of fraudulent representations that they would be used for a land development project in Malibu.

Plaintiffs also seek judicial notice of representations debtor Alan Degenhardt allegedly made before the Fresno Bankruptcy Court in KRR's bankruptcy case that he was a principal officer, director, and owner of Triple J's, and that he used Triple J's to gain control of KRR. Under the Code definition, if the debtor is an individual, an "insider" includes a relative of the debtor and a corporation in which the debtor is a director, officer, or person in control. Plaintiffs contend that that they are entitled to summary judgment as to the first claim for relief for fraud because both Defendants derived a benefit from the loan in using their insider affiliations to obtain money for Triple J's. Plaintiffs contend they are entitled to summary judgment as to the second claim for relief based on use of a false statement in writing respecting an insider's financial condition because Defendants obtained the loan for Triple J's with fraudulent appraisals based on the insider's, Triple J's, financial condition. Plaintiffs contend that the findings in the *Liebling* Action collaterally estop re-litigation of the issue that Triple J's, and implicitly the defendants, committed intentional fraud against Plaintiffs.

Defendants argue Plaintiffs have never introduced facts or claims concerning Triple J's involvement in the alleged fraudulent conduct or Defendants' affiliation with Triple J's, and that these allegations should have been raised in Plaintiffs' Complaint. To raise these allegations more than four years after the initial filing is far too late.

In their Reply, Plaintiffs contend that the Joint Pre-Trial Stipulation supersedes the pleadings and therefore controls the subsequent course of the case, and that the

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT...

Alan Jerome Degenhardt

Chapter 7

inclusion of a single paragraph that questions the role of Triple J's in this matter is an issue of fact that remains to be litigated, thus creating a triable issue of fact. Plaintiffs also argue that the Defendants' failure to fulfill their duty to honestly disclose information on their schedules and statement of financial affairs, including their affiliation with Triple J's, justifies Plaintiffs' ignorance as to Triple J's existence and potential role in this matter. Plaintiffs argue they relied on Defendants' supposedly full and honest disclosure of their financial affairs, and it was Defendants' concealment of their affiliation with Triple J's that prevented Plaintiffs from including reference to Triple J's in its Complaint. Plaintiffs further argue that Triple J's fraud relates back to how Defendants gained control of KRR because the Complaint alleged concealment of material facts, including an unidentified Nevada shell corporation, and it wasn't until discovery that Plaintiffs learned of Triple J's role in the alleged fraud. Plaintiffs also contend that judicial estoppel precludes debtor Alan Degenhardt from controverting his status as officer and owner of Triple J's because he previously made those representations in a declaration and statements to the Fresno Bankruptcy Court. Lastly, Plaintiffs invoke equitable tolling to justify their request to amend the Complaint even now if necessary because Defendants' concealment precluded Plaintiffs from timely discovering the necessary facts to support allegations of Triple J's involvement.

2. Standards for Summary Judgment under §532(a)(2)

A party seeking summary judgment bears the initial responsibility of demonstrating there is an absence of a genuine issue of material fact and that it is entitled to judgment as a matter of law. *Celotex Corporation v. Catrett*, 477 U.S. 317, 322-23 (1986). If the moving party carries its burden, the opposing party must demonstrate the existence of a genuine fact at issue for trial. *Celotex*, 477 U.S. at 331. The substantive law will identify which facts are material, as only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Summary judgment is inappropriate if there is a genuine factual dispute such that a reasonable jury could return a verdict for the nonmoving party. *Id.*

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

The court must view the evidence presented on the motion in the light most favorable to the opposing party. *Id.* at 261 n.2.

Under California law, as adopted in federal court, the "elements of a fraud claim include a false representation, knowledge of its falsity, intent to defraud, justifiable reliance, and damages." *Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1105 (9th Cir. 2003) (quoting *Moore v. Brewster*, 96 F.3d 1240, 1245 (9th Cir. 1996)). A creditor bears the burden of proof in a nondischargeability action. *Grogan v. Garner*, 498 U.S. 279, 285 (1991). A debt is nondischargeable under §523(a)(2)(A) when the creditor establishes that 1) the debtor made representations; 2) at the time debtor knew they were false; 3) he made them with the intention and purpose of deceiving the creditor; 4) the creditor relied on such representations; and 5) the creditor sustained the alleged loss and damage as the proximate result of the representations having been made. *In re Britton*, 950 F.2d 602, 604 (9th Cir. 1991); see *In re Eashai*, 87 F.3d 1082, 1086-1087 (9th Cir. 1996). The elements of a §523(a)(2)(A) action mirror the common law elements of fraud. *In re Storer*, 380 B.R. 223, 231 (Bankr. D. Mont. 2007). The Ninth Circuit uses the common law elements of fraud in exception to discharge cases. *In re Eashai*, 87 F.3d at 1087.

To recover under section 523(a)(2)(B) based on a fraudulent writing respecting the debtor's or insider's financial condition, the Ninth Circuit requires the creditor establish 1) a representation of fact by the debtor, 2) that was material, 3) that the debtor knew at the time was false, 4) that the debtor made with the intention of deceiving the creditor, 5) that creditor relied on that representation, 6) that creditor's reliance was reasonable, and 7) that damage proximately resulted from the misrepresentation. *In re Siriani*, 967 F.2d 302, 304 (9th Cir. 1992).

3. Judicial Notice

The court may take judicial notice of a fact that is not subject to reasonable dispute because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." FRE 201(b)(2). This includes undisputed matters of public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 689-690 (9th Cir.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

2001). A court may also take judicial notice of another court's opinion *but not of the facts recited therein*. *Id.*; *Harris v. Cty. of Orange*, 682 F.3d 1126, 1132 (9th Cir. 2012).

4. Laches and Rule 15

The complaint as drafted (and as it has stood unchanged for almost five years) concerns a real estate loan gone bad in Kingsburg, California. But Plaintiffs base their Motion for Summary Judgment as to the first claim for relief for fraudulent misrepresentations on Defendants' alleged fraudulent acts through Triple J's as insiders of the corporation. But resolution of this claim hinges on bringing in entirely new allegations that Defendants were affiliated with Triple J's as insiders, and that Triple J's served as the vehicle for Defendants' fraud. If this part succeeds plaintiff then will argue that the matter has been already resolved in the *Liebling* Action.

Similarly, Plaintiffs base their Motion for Summary Judgment as to the second claim for relief under Section 523(a)(2)(B) for use of a false statement in writing on Defendants' use of a false appraisal as insiders of Triple J's. Again, resolution of the claim turns on bringing in entirely new allegations that Defendants were affiliated with Triple J's as insiders.

Laches is available as a defense in a proceeding seeking nondischargeability. 9 Collier on Bankruptcy ¶ 4007.03 (16th ed. 2015); see *In re Beaty*, 306 F.3d 914, 923 (9th Cir. 2002) (laches available as affirmative defense in Section 523(a)(2)(B) action, provided the defendant can establish the requisite elements); *In re Baptiste*, 430 B.R. 507, 512 (Bankr. N.D. Ill. 2010) (laches available as affirmative defense in Section 523(a)(2)(A) action). Laches is established when a defendant proves: 1) a lack of diligence or unreasonable delay by plaintiffs, and 2) that it has suffered prejudice as a result. *Beaty* at 926. However, "[b]ecause the application of laches depends on a close evaluation of all the particular facts in a case, it is seldom susceptible of resolution by summary judgment." *Beaty*, at 928 (citing *Couveau v. Am. Airlines, Inc.*, 218 F.3d 1078, 1083 (9th Cir. 2000)). But this case belongs in that rare minority.

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT...

Alan Jerome Degenhardt

Chapter 7

Laches may be invoked against a party that sleeps on its rights. *Jeffrey v. Pioneer Placer Dredging Co.*, 50 F. Supp. 43, 50 (D. Mont. 1943) (citations omitted). "In determining whether a party is guilty of laches barring equitable relief, neglect to learn what might be known is counted as knowledge, where there is suspicion of fraud. The established principles as to the discovery of fraud are that the party defrauded must be diligent in making inquiry, that means of knowledge are equivalent to knowledge, that a clue to the facts, which, if diligently followed, would lead to a discovery, is, in law equivalent to a discovery. Mere ignorance of the facts will not excuse delay, but the party must be diligent and make such inquiry and investigation as the circumstances reasonably suggest, and means of knowledge are equivalent to actual knowledge." *Id.* (citations omitted).

A complaint must provide "fair notice" to defendants of the facts and legal theories brought against them. *Dream Games of Arizona, Inc. v. PC Onsite*, 561 F.3d 983, 995 (9th Cir. 2009). Attempting to litigate the issue without amending the complaint with new allegations or claims robs the defendant of fair notice and unduly prejudices it. *Id.* A court may not consider new allegations raised at the motion for summary judgment stage when those allegations were not part of the original complaint and plaintiff had not moved to amend the original complaint. *Pickern v. Pier 1 Imports (U.S.), Inc.*, 457 F.3d 963, 969 (9th Cir. 2006); see *Ansam Associates, Inc. v. Cola Petroleum, Ltd.*, 760 F.2d 442, 446 (2d Cir. 1985) (denying leave to amend complaint to bring in complete new facts allegedly discovered only recently because amendment would unduly prejudice defendant since discovery was completed and defendant had already filed a motion for summary judgment). The issues on summary judgment are framed by the complaint. *United States v. Sierra Pac. Indus.*, 879 F. Supp. 2d 1096, 1108 (E.D. Cal. 2012).

Laches bars Plaintiffs from bringing in new allegations of Triple J's involvement to establish its claim for fraud as the basis to determine the state court judgment nondischargeable. Though laches is not regularly the grounds for resolution by summary judgment because the defense usually requires resolution of factual issues, the facts providing the basis for resolving this matter under laches are

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

undisputed. Plaintiffs' Complaint fails to allege the existence of Triple J's and its potential role in the alleged fraudulent scheme, or that Defendants were affiliated with an entity other than KRR in order to execute their scheme. Before this Motion, Plaintiffs did not seek the court's leave to amend their Complaint to incorporate this new party or any of these new allegations.

To cure these omissions, Plaintiffs seek judicial notice of the *Liebling* Action (Docket No. 245, Exhibit 1). Plaintiffs in this action were also plaintiffs in the *Liebling* Action, and Triple J's Corporation was a named defendant in that action. Plaintiffs seek judicial notice of the *Liebling* Action to establish that, under the doctrine of collateral estoppel, the Superior Court's findings preclude litigation of the issue that, as insiders of Triple J's, Defendants utilized the corporation to gain control of KRR while it was in bankruptcy, and that Triple J's committed intentional fraud against Plaintiffs. But because the *Liebling* Action judgment is dated April 2, 2014, at the very least, Plaintiffs were on notice two years ago that Defendants may have been affiliated with Triple J's, yet failed to be diligent and make the necessary inquiries to acquire more details to support its claim of *fraud in this action*. Therefore, the argument that somehow the faulty schedules from 2011 should serve as an excuse is hollow indeed.

In addition, Plaintiffs acknowledged the existence of Triple J's and its potential role in the present litigation well before April 2014. Filed on July 31, 2012 in this adversary proceeding, the Joint Pre-Trial Stipulation entered into by Plaintiffs and Defendants provides that the issue of fact as to the identity and role of Triple J's in this matter remains to be litigated. (Docket No. 258, Exhibit B). Yet Plaintiffs have waited almost four years from that date to formally allege Triple J's involvement in the facts as alleged *in this complaint*. Nor is the court persuaded that this vague reference in the Pre-Trial Stipulation alone somehow saves the case for Plaintiffs. A passing and vague reference to Triple J's is not the same thing as a charging allegation of fraud with the particularity required under FRCP 9. Having waited for so long and relied so much on a determination in *Mosier*, Plaintiffs cannot now switch directions

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

at the eve of the oft-continued trial.

This conduct demonstrates Plaintiffs' lack of diligence and/or unreasonable delay in bringing the allegations Plaintiffs now seeks to raise for the first time in this adversary proceeding. Plaintiffs' failure to amend the complaint unduly prejudices Defendants. Defendants have not received fair notice of these new allegations and claims, discovery has been concluded, and two motions for summary judgment have been filed, yet Plaintiffs seek to litigate their claims based on a new set of facts. This is unreasonable delay that would unduly prejudice Defendants. Therefore, laches appropriately bars Plaintiffs' claims for relief.

In their Reply, Plaintiffs maintain they have the right to amend the Complaint to incorporate these allegations and claims, thereby framing their request, at least in part, as a motion under Rule 15 of the Federal Rules of Civil Procedure. Under FRCP 15(a), "[l]eave to amend pleadings 'shall be freely given when justice so requires.'" *In re Magno*, 216 B.R. 34, 38 (9th Cir. BAP 1997). Generally, "[t]he Ninth Circuit applies this rule with 'extreme liberality.'" *Id.*; *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1294 (9th Cir. 2000). However, as Plaintiffs seek to amend their Complaint at this late date, leave to amend the Complaint may not be granted. *See Solomon v. N. Am. Life & Cas. Ins. Co.*, 151 F.3d 1132, 1139 (9th Cir. 1998) (district court's denial of leave to amend was not an abuse of discretion because allowing the motion on the eve of the discovery deadline would cause undue delay and prejudice); *Drew v. Equifax Info. Servs., LLC*, 690 F.3d 1100, 1111 (9th Cir. 2012) (district court's denial of leave to amend on the eve of trial was not an abuse of discretion); *Roberts v. Arizona Bd. of Regents*, 661 F.2d 796, 798 (9th Cir. 1981) (affirming district court's denial of leave to amend to add new claim at the eleventh hour after discovery was virtually complete and summary judgment motion was pending before the court); *see Ansam Associates, Inc. v. Cola Petroleum, Ltd.*, 760 F.2d 442, 446 (2d Cir. 1985).

For the first time in this adversary proceeding, two weeks before the date set for the hearing on Plaintiffs' and Defendants' Motions for Summary Judgment with trial set for the following day, Plaintiffs attempt to amend the Complaint as necessary

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

to incorporate their allegations relating to Triple J's. (Docket No. 260 at p. 8).
Discovery has been completed, both Plaintiffs' and Defendants' Motions for
Summary Judgment have been fully briefed, and trial is set to immediately follow the
hearing on these Motions. At this late date, Plaintiffs' request for leave to amend
must be denied.

5. *Res Judicata* Bars Both Claims for Relief

Both claims for relief are barred by *res judicata* or collateral estoppel because
the *Mosier* judgment is final and adjudicated on the merits, involves the same parties,
and arises out of the same transactional nucleus of facts as the fraud alleged in this
action.

"A state court judgment is given the same preclusive effect by a federal court
as it would be given by a court of the state in which the judgment was rendered." *In
re Peklar*, 260 F.3d 1035, 1039 (9th Cir. 2001) (citing 28 U.S.C. § 1738; *Marrese v.
Am. Acad. of Orthopedic Surgeons*, 470 U.S. 373, 105 S.Ct. 1327, 84 L.Ed.2d 274
(1985)).

"Res judicata precludes the relitigation of a cause of action only if (1) the
decision in the prior proceeding is final and on the merits; (2) the present action is on
the same cause of action as the prior proceeding; and (3) the parties in the present
action or parties in privity with them were parties to the prior proceeding. *Res
judicata* bars the litigation not only of issues that were actually litigated in the prior
proceeding, *but also issues that could have been litigated in that proceeding.*" *Zevnik
v. Superior Court*, 159 Cal. App. 4th 76, 82 (2008) (citing *Busick v. Workmen's Comp.
Appeals Bd.*, 7 Cal.3d 967, 974 (1972))(italics added). An identity of claims exists
justifying preclusion under *res judicata* when two suits arise from the same
transactional nucleus of facts. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l
Planning Agency*, 322 F.3d 1064, 1078 (9th Cir. 2003) (citing *Owens v. Kaiser
Found. Health Plan, Inc.*, 244 F.3d 708, 714 (9th Cir. 2001)).

Res judicata bars Plaintiffs from re-litigating its fraud claims. The *Mosier*

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT...

Alan Jerome Degenhardt

Chapter 7

judgment entered by the Superior Court was final and on the merits as there appears to be no appeal pending. In addition, there is privity between the parties, given that it is undisputed that Alan Degenhardt controlled KRR despite the fact that Plaintiffs named KRR as the defendant in the *Mosier* Action, not the individual Debtors. Lastly, the claims are identical justifying the invocation of *res judicata* because the fraud claims in both the *Mosier* Action and this adversary proceeding *arise from the same transactional nucleus of facts*. The court in the *Mosier* judgment found that there was insufficient evidence to support Plaintiffs' claims of fraud based on allegations that Defendants defrauded Plaintiffs and other lenders by representing that they needed funds to finance a loan secured by an RV park using fraudulent appraisals. The two claims for relief raised in this Motion arise from the same transactional nucleus of facts – that Defendants defrauded Plaintiffs in representing the funds would be used to finance a loan secured by the RV park for KRR, and (as would be necessary to make a section 523(a)(2)(B) claim) that Defendants made representations based on a false statement in writing concerning a corporation's financial condition, namely the fraudulent appraisals of the RV park. Because the fraud claims in both the *Mosier* Action and this proceeding arise from the same transaction or nucleus of facts concerning the same parties, Plaintiffs are precluded from re-litigating these claims and bringing in entirely new allegations of facts and legal theories to carry their burdens of proof.

6. Collateral Estoppel Bars Both Claims for Relief

Both claims are also barred by the similar doctrine of collateral estoppel because the *Mosier* judgment contained findings that there was no fraud after the issue was litigated and necessarily decided concerning the parties in this action.

"In determining the collateral estoppel effect of a state court judgment, federal courts must, as a matter of full faith and credit, apply that state's law of collateral estoppel." *In re Briles*, 228 B.R. 462, 466 (Bankr. S.D. Cal. 1998) (quoting *In re Bugna*, 33 F.3d 1054, 1057 (9th Cir.1994)); *In re Lake*, 202 B.R. 751, 757 (9th Cir. BAP 1996). Under California law, "[c]ollateral estoppel precludes the relitigation of an issue only if (1) the issue is identical to an issue decided in a prior proceeding; (2)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT...

Alan Jerome Degenhardt

Chapter 7

the issue was actually litigated; (3) the issue was necessarily decided; (4) the decision in the prior proceeding is final and on the merits; and (5) the party against whom collateral estoppel is asserted was a party to the prior proceeding *or in privity with a party to the prior proceeding*. *In re Kelly*, 182 B.R. 255, 258 (9th Cir. BAP 1995), *aff'd*, 100 F.3d 110 (9th Cir. 1996) (emphasis added). In a nondischargeability action, "a bankruptcy court could properly give collateral estoppel effect to those elements of the claim that are identical to the elements required for discharge and which were actually litigated and determined in the prior action." *Grogan*, 498 U.S. at 284.

Collateral estoppel bars Plaintiffs from re-litigating the identical issue of fraud as determined in the *Mosier* judgment. The issues as to whether defendants engaged in fraud and concealment were actually litigated at trial. The *Mosier* Action court necessarily decided those issues when it entered a final judgment on the merits finding that there was insufficient evidence to support plaintiffs' claims that defendants fraudulently obtained the loans or secured these loans using fraudulent appraisals. (Docket No. 258, Exhibit E at p. 5 ln 23 to p. 6 ln 20). The distinction that Plaintiffs named KRR as the defendant in the *Mosier* Action and not the individual Debtors is not determinative. As stated above, given that it is undisputed that Alan Degenhardt controlled KRR, there is obvious privity between Alan Degenhardt and KRR, and the parties involved in the *Mosier* Action and this instant action are therefore the same. Because the elements for fraud in state court are the same as the elements for Section 523(a)(2)(A) and Section 523(a)(2)(B) claims in a nondischargeability action, and each requirement for collateral estoppel has been met, this court may give collateral estoppel effect to the elements of each claim. Accordingly, collateral estoppel bars the issues of fraud or a false financial statement, precluding recovery on both claims of relief.

It is unclear precisely what relief Plaintiffs request in their Motion for Summary Judgment. The Plaintiffs in their Motion request "the Court find that the debts to Plaintiffs resulting from the *Liebling* judgment to be non-dischargeable in Defendants' bankruptcy," and that the amounts owed to each plaintiff as set forth in that judgment be awarded." (Motion at p. 11 lns 2-5). However, the *Liebling*

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

judgment awards damages to plaintiffs in that action who were defrauded by a largely different set of defendants (excepting only Triple J's) fraudulently obtaining loans in representing that the money would be used in a *Malibu land development project*. The instant action concerns an entirely different transaction, where Plaintiffs allege the loans were fraudulently obtained by individual Defendants who represented the funds would be used for the debtor-in-possession loan Defendants needed in order to pay off KRR's secured and unsecured debts to emerge from bankruptcy in a *Kingsburg California deal*. Obviously, then, the nucleus of issues is quite different from *Liebling* Action but similar or identical to the *Mosier* Action.

As discussed above, laches bars Plaintiffs from now changing focus of this litigation to the involvement of Triple J's in this proceeding. Accordingly, Plaintiffs' request that the *Liebling* judgment collaterally estop the parties from disputing and litigating the issue of Triple J's involvement is unavailing. Because the *Mosier* judgment precludes the parties from re-litigating Plaintiffs' claims of fraud under *res judicata* and collateral estoppel, Plaintiffs' Motion for Summary Judgment will be granted in favor of Defendants under FRCP 56(f), the remaining claims for relief (if any) dismissed, and this litigation terminated.

Deny motion but grant summary judgment for defendants under Rule 56(f).

Party Information

Debtor(s):

Alan Jerome Degenhardt

Represented By
Christina M Chan
Michael N Nicastro

Defendant(s):

Tyna Maree Degenhardt

Represented By
Thomas J Polis

Alan Jerome Degenhardt

Represented By
Thomas J Polis

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

Joint Debtor(s):

Tyna Maree Degenhardt

Represented By
Christina M Chan
Michael N Nicastro

Plaintiff(s):

Richard Abel

Pro Se

Henry Crigler

Pro Se

Carl Barnes

Pro Se

Dolores Abel

Pro Se

Trustee(s):

John M Wolfe (TR)

Pro Se

John M Wolfe (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

8:11-23786 Alan Jerome Degenhardt

Chapter 7

Adv#: 8:11-01520 Abel et al v. Degenhardt et al

#14.00 Defendant's Motion For Summary Judgement
(cont'd from 8-11-16)

Docket 238

***** VACATED *** REASON: OFF CALENDAR; ORDER APPROVING
STIPULATION FOR ORDER DISMISSING ADVERSARY PROCEEDING
ENTERED 10-5-16**

Tentative Ruling:

Tentative for 8/11/16:

Same as #13?

Tentative for 3/17/16:

This matter will be advanced to 10:00 a.m.

This is Defendants' motion for summary judgment. Trial was scheduled for October 19, 2015, but was continued (as it had been continued several times before) because a decision was expected in *Mosier, et al., v. KRR, et al.*, Case No. SCV-247315 in Sonoma County Superior Court (the "*Mosier* Action"). It was argued several times in support of successive continuances that the disposition in the *Mosier* Action would likely be determinative. A "Decision Following Court Trial" was entered in the *Mosier* Action on October 22, 2015 [Defendants' RJN, Exh. A] and a Judgment was entered on January 20, 2016 [Defendants' RJN, Exh. E]. Pursuant to an "Order Denying Plaintiffs' Motion for Summary Judgment" entered November 19, 2012 in this adversary proceeding, summary judgment was already granted in Defendants' favor on the third and fourth claims for relief under section 523(a)(4) and 523(a)(19), respectively. The first and second claims state claims under section 523(a)(2)(A) and 523(a)(2)(B) are thus the only remaining theories for relief. On the strength of the judgment in the *Mosier* Action Defendants now argue that the section 523(a)(2)

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

(A) and (B) claims in this adversary proceeding are precluded by the judgment. Plaintiffs oppose the motion, changing course 180 degrees by arguing (despite earlier arguments) that there are still disputed issues of material fact that remain to be litigated. Trial is scheduled to immediately follow the summary judgment motions.

There are many similarities between this matter and the summary judgment motion brought by Plaintiffs [#1 on calendar]. That motion is brought largely on the strength of the judgment entered in yet another Sonoma County lawsuit, the *Liebling* Action. The court's tentative decision on #1 is incorporated herein by reference and the discussions therein about standards under Rule 56 need not be repeated here. The pertinent discussions in that tentative decision about principles of *res judicata*, collateral estoppel, Rule 15 and laches are abbreviated below.

Federal courts must give the same preclusive effect to a state court judgment as would be given to that judgment under the law of the state in which the judgment was rendered. Collateral estoppel applies in dischargeability proceedings. *Grogan v. Garner*, 498 U.S. 279, 284-285 (1991). Under California law, the application of collateral estoppel requires that: (1) the issue sought to be precluded from re-litigation must be identical to that decided in a former proceeding; (2) the issue must have been actually litigated in the former proceeding; (3) it must have been necessarily decided in the former proceeding; (4) the decision in the former proceeding must be final and on the merits; and (5) the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding. *In re Kelly*, 182 B.R. 255, 258 (9th Cir. BAP 1995), *aff'd*, 100 F.3d 110 (9th Cir. 1996).

The issues are the same here as in the *Mosier* Action. In order to establish the nondischargeability of a debt under section 523(a)(2)(A), Plaintiffs must show: (1) the debtor made representations; (2) at the time he knew they were false; (3) that he made them with the intention and purpose of deceiving Plaintiffs; (4) that the creditor relied on the representations; and (5) that the creditor sustained the alleged loss and damage as the proximate result of the misrepresentations having been made. *American Express Travel Related Services Co Inc. v. Hashemi (In re Hashemi)*, 104 F.3d 1122, 1125 (9th Cir. 1997). These requirements are the same as the elements of common

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

law fraud. *Citibank v. Eashai (In re Eashai)*, 87 F.3d 1082, 1087 (9th Cir. 1996). The *Mosier* Action involved fraud and this adversary proceeding involves the same under § 523(a)(2)(A).

The same applies to the section 523(a)(2)(B) claim, which involves fraudulent representations made in writing with respect to financial condition. Section 523(a)(2)(B) provides that a debt obtained with the use of a statement in writing (1) that was materially false; (2) respecting the debtor's or an insider's financial condition; (3) on which the creditor reasonably relied; and (4) that debtor caused or made to be published with intent to deceive is not dischargeable. The Ninth Circuit has set forth the elements as follows: (1) a representation of fact by the debtor, (2) that was material, (3) that the debtor knew at the time to be false, (4) that the debtor made with the intention of deceiving the creditor, (5) upon which the creditor relied, (6) that the creditor's reliance was reasonable, (7) that damage proximately resulted from the representation. *In re Candland*, 90 F.3d 1466, 1469 (9th Cir. 1996). The *Mosier* Action involved allegations that misrepresentations were made in connection with a loan made by Plaintiffs to KRR, including in writings about financial condition, including in the form of appraisals. Those same allegations are made in this adversary proceeding. Importantly, unlike *Liebling*, this adversary proceeding is about the same nucleus of facts as in the *Mosier* Action.

The issue of fraud was actually litigated in the *Mosier* Action. In its decision the state court found that there was insufficient evidence to support claims of fraud and concealment. The issue was necessarily decided because a judgment was entered. There is no indication that an appeal was filed, so the judgment is final and on the merits. While the defendant in the *Mosier* Action was King River Resorts ("KRR"), there does not appear to be any dispute that Mr. Degenhardt controlled KRR and thus is in privity and so the parties are effectively the same, thus fulfilling all of the elements for collateral estoppel as discussed above.

Plaintiffs argue that there are still issues of fact that remain to be litigated, including the true purpose of the DIP loan made to Kings River Resorts, Inc. in 2006; where the money went; why the proceeds of the DIP loan were not placed into a

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT...

Alan Jerome Degenhardt

Chapter 7

neutral third party escrow controlled by the Bankruptcy Court in the Eastern District; and whether the DIP funds were used in accordance with orders of that court. To the extent any of these issues go to Plaintiffs' section 523(a)(2) claims, they should have been raised in the *Mosier* Action. *Res judicata* bars a party from bringing a claim if a court of competent jurisdiction has entered a final judgment on the merits of the claim in a previous action involving the same parties. *In re International Nutronics, Inc.*, 28 F.3d 965, 969 (9th Cir. 1994) citing *In re Jensen*, 980 F.2d 1254, 1256 (9th Cir.1992). *Importantly, all grounds for recovery that could have been asserted, whether they were or not, are barred. Id.* citing *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1320 (9th Cir.1992). To determine whether the same claim is involved, courts consider (1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts. *Harris v. Jacobs*, 621 F.2d 341, 343 (9th Cir. 1980). A final judgment has been entered in the *Mosier* Action and the same parties or privies are involved. The *Mosier* Action and this adversary proceeding arise out of the same transactional nucleus of facts. The two actions both involve the same loan transaction and allegations of fraud in obtaining that loan. Plaintiffs are precluded from now asserting different facts in support of their same fraud claim. The issue of fraud with respect to this loan transaction has been determined in *Mosier* Action and that decision has preclusive effect here.

In addition to asserting there are still issues of fact concerning their fraud claim, Plaintiffs allege that Mr. Degenhardt took actions in 2006 in a KRR bankruptcy pending in the Eastern District that violated orders of the Fresno Bankruptcy Court. Plaintiffs ask that this court now issue an order requiring Degenhardt to return funds to the bankruptcy estate of Kings River Resorts, Inc. and to reopen a later-filed bankruptcy case of KRR (8:15-12051-TA) pending before this court so that Plaintiffs may file a proof of claim therein. First, it is not appropriate to raise such new issues at this very late date in this proceeding under Rule 15 and under laches principles, as is discussed at greater length in matter #1. Second, to the extent that Plaintiffs believe

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... Alan Jerome Degenhardt

Chapter 7

that there were violations of the Fresno Bankruptcy Court's orders those claims should be only brought before that court. It is neither appropriate (nor seemly) for this court to revisit those issues in this adversary proceeding, even if all of the other concerns discussed above did not apply.

Grant

Party Information

Debtor(s):

Alan Jerome Degenhardt

Represented By
Christina M Chan
Michael N Nicastro

Defendant(s):

Tyna Maree Degenhardt

Represented By
Thomas J Polis

Alan Jerome Degenhardt

Represented By
Thomas J Polis

Joint Debtor(s):

Tyna Maree Degenhardt

Represented By
Christina M Chan
Michael N Nicastro

Plaintiff(s):

Richard Abel

Pro Se

Henry Crigler

Pro Se

Carl Barnes

Pro Se

Dolores Abel

Pro Se

Trustee(s):

John M Wolfe (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Theodor Albert, Presiding
Courtroom 5B Calendar**

Thursday, October 06, 2016

Hearing Room

5B

11:00 AM

CONT... **Alan Jerome Degenhardt**

Chapter 7

John M Wolfe (TR)

Pro Se

U.S. Trustee(s):

United States Trustee (SA)

Pro Se